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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/778,371	02/07/2001	Cornelia Sprengard-Eichel	8369Q	6846

27752 7590 07/16/2003

THE PROCTER & GAMBLE COMPANY
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EXAMINER	
KIDWELL, MICHELE M	
ART UNIT	**PAPER NUMBER**
3761	

DATE MAILED: 07/16/2003 15

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/778,371	SPRENGARD-EICHEL ET AL.	
	Examiner	Art Unit	
	Michele Kidwell	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *21 April 2003* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-7 and 9-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *2* is/are allowed.

6)☒ Claim(s) *1,3-5,7 and 9-10, 12-18* is/are rejected.

7)☒ Claim(s) *6,11,19 and 20* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 21, 2003 has been entered.

Response to Arguments

Applicant's arguments with respect to claims 3, 12 and 17 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 4 – 5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With reference to claim 4, the language of the claim is unclear. The applicant claims "wherein the thermal cell actuator the function..." It is unclear what the applicant intends to claim as an invention. Correction and/or clarification are required.

As to claim 5, the applicant claims a "garment body." It is unclear what the applicant intends to encompass with this term. Clarification and/or correction are required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3 – 4, 7 and 17 – 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Pyrozyk et al. (US 5,431,622).

With respect to claim 1, Pyrozyk et al. (hereinafter "Pyrozyk) discloses an absorbent article comprising a backsheet (54), a liquid pervious topsheet (52) joined to the backsheet (figure 1), an absorbent core (46) disposed intermediate the topsheet and the backsheet (col. 3, lines 8 – 26) and a thermal cell actuator (144) which adds or removes heat from at least a portion of the absorbent article upon actuation so as to result in a useful function of maintaining the article at a predefined temperature as set forth in col. 5, lines 4 – 10.

With reference to claim 3, Pyrozyk discloses an absorbent article comprising a backsheet (54), a liquid pervious topsheet (52) joined to the backsheet (figure 1), an absorbent core (46) disposed intermediate the topsheet and the backsheet (col. 3, lines 8 – 26) and an electrically powered thermal cell actuator (144) which adds or removes heat from at least a portion of the absorbent article upon actuation so as to result in a useful function of maintaining the article at a predefined temperature as set forth in col. 5, lines 4 – 10 and in figure 4.

As to claim 4, Pyrozyk discloses an absorbent article wherein the thermal cell actuator function is performed at a location between the backsheet of the article and the skin of the wearer in response to a change in temperature as set forth in col. 1, lines 45 – 52.

With reference to claim 7, Pyrozyk discloses an absorbent article wherein the thermal cell actuator controls temperature in the article as set forth in col. 5, lines 5 – 10.

With reference to claim 17, Pyrozyk discloses an article wherein the thermal cell actuator changes a mechanical property of a component of the article other than the thermal cell actuator as set forth in col. 5, lines 5 – 10.

Since the applicant discloses that the thermostat is used to add heat to the absorbent article, the examiner contends that this addition of heat to at least the moisture barrier (disclosed as a plastic sheet in col. 3, lines 19 – 21) would cause the material to become more pliable thereby changing a mechanical property of this barrier layer.

As to claim 18, Pyrozyk discloses the component as a cuff opening in figure 1. The examiner contends that the edge of the barrier layer that leads to the top of the article may be considered a cuff opening.

Claims 1, 4, 7, 9 – 10 and 13 – 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Glaug et al. (US 5,797,892).

With respect to claim 1, Glaug et al. (hereinafter "Glaug") discloses an absorbent article comprising a backsheet (58), a liquid pervious topsheet (60) joined to the backsheet (col. 5, lines 34 – 38), an absorbent core (82) disposed intermediate the topsheet and the backsheet (figure 6) and a thermal cell actuator (54) which adds or removes heat from at least a portion of the absorbent article upon actuation so as to result in a useful function selected from the listed group as set forth in col. 8, line 51 to col. 9, line 16. The temperature change member (54) of Glaug will remove heat from at least a portion of the absorbent article upon actuation so as to result in maintaining the article at a predefined temperature (i.e., a change from about 2.8° – 13.8° C) as set forth in col. 9, lines 3 – 5.

Regarding claim 4, Glaug discloses an absorbent article wherein the thermal cell actuator performs a function between the backsheet of the article and the skin of the wearer in response to a change in relative humidity, moisture or temperature as set forth in col. 8, lines 51 – 57.

As to claim 7, Glaug discloses an absorbent article wherein the thermal cell actuator controls humidity or temperature in the article as set forth in col. 8, lines 51 – 64.

With respect to claims 9 and 10, see col. 9, lines 45 – 52.

As to claim 13, Glaug discloses an absorbent article wherein the thermal cell actuator is not in contact with the wearer's skin when the article is worn as set forth in figure 6.

Regarding claim 14, Glaug discloses an article wherein the thermal cell actuator is in vapor communication with the wearer's skin such that vapor can condensate inside the article as set forth in col. 16, lines 42 – 48.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 12 – 13 and 15 – 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pyrozyk (US 5,431,622).

The difference between Pyrozyk and claim 12 is the provision that the thermal cell actuator provides a temperature in the range of 15° and 25° C.

Pyrozyk discloses an absorbent article including a thermal cell actuator the maintains the article at a predefined temperature as set forth in col. 5, lines 5 – 10.

It would have been obvious to one of ordinary skill in the art to modify the temperature at which the article is maintained since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable range requires only a level of ordinary skill in the art.

As to claim 13, Pyrozyk discloses a thermal cell actuator that is not in contact with the wearer's skin when the article is worn as set forth in figure 4.

As to claim 15, Pyrozyk discloses a thermal cell actuator that is triggered by a user during application of the article as set forth in col. 5, lines 5 – 10. The examiner contends that any time used to prepare the article for use (i.e. applying the bandage to the skin, setting the thermostat, etc.) may be considered as the application of the article.

The difference between Pyrozyk and claim 16 is the provision that the temperature is constant for at least 1 hour.

Pyrozyk discloses the use of thermal cell actuator to maintain the water at a certain temperature.

The examiner contends that the device of Pyrozyk is fully capable of maintaining a constant temperature for at least 1 hour since the device is electrically powered and would be sustained by an electric connection that is capable of lasting at least one hour if desired.

With respect to the applicant's arguments that Glaug fails to teach a predetermined temperature, the examiner disagrees. Glaug discloses that the training aid provides a surface temperature change of from about 5 to about 25°F (col. 9, lines 3 – 5). While the applicant considers this a range of temperature

changes, the examiner contends that this range is still a temperature that has been predefined by Glaug. If, for example, the temperature changes 5°, 6° or 14°, this is still considered a predetermined temperature because Glaug has already determined that the temperature will fall within this range.

Allowable Subject Matter

Claim 2 is allowed.

Claims 6, 11 and 19 – 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 703-305-2941. The examiner can normally be reached on Monday - Friday, 7:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on 703-308-1957. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3590 for regular communications and 703-305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

Michele Kidwell
Michele Kidwell
July 11, 2003

Aaron J. Lewis
Primary Examiner